

Learning Objectives for AABC Pre-Reading

This document covers the Terminal Learning Objectives (TLO) and subordinate tasks (Enabling Learning Objectives (ELO)) for Army Acquisition Basic Course (AABC) Pre-Readings. These readings provide AABC students with an introductory understanding of the acquisition process and familiarization with terms and acronyms. Accomplishment of the TLOs and ELOs will enable the students to pass the course pre-test¹ with an 80% or higher.

Pre-Reading 3: “Contracting for the Rest of Us”, an extract from the Defense Acquisition University’s class CLL 011

TLO 1: Recognize why and How DoD uses contracts to acquire needed supplies and services, the legal nature of contracts, their preparation process, and the different contracts and solicitations that can be used based on the program risk equation.

Tasks:

- ELO 1.1: Recognize why contracts are needed.
- ELO 1.2: Recognize the legal nature of a contract.
- ELO 1.3: Recognize the Federal Acquisition Regulation (FAR) and its Supplements as governing the contracting and procurement process..
- ELO 1.4: Recognize the three types of contracting officers.
- ELO 1.5: Recognize the difference between sealed bidding and negotiation methods of contracting
- ELO 1.6: Recognize the difference between fixed price and cost –reimbursable type contracts

TLO 2: Recognize the proposal, preparation, formal source selection, and contract award processes and each process’s interrelationship.

Tasks

- ELO 2.1: Recognize the work required to develop a contract requirements package and the need for coherent solicitation packages.
- ELO 2.2: Recognize the RFP development sequence, to include development of source selection criteria before release to industry.
- ELO 2.3: Recognize the necessity for a well written Statement of Work (SOW) and DoD’s movement towards Performance Based Contracting.
- ELO 2.4: Recognize how the cost of contractor furnished data and how to request contractor-furnished data in an RFP.
- ELO 2.5: Recognize the formal source selection procedures from receipt of contractor’s proposal.
- ELO 2.6: Recognize the use of cost and pricing data in the context of determining a fair and reasonable price.

¹ The pre-test given on day one is for instructor purposes only and will not be added into the students’ course grade.

TLO 3: Identify the role of contract administration, the need for a formal contract amendment process and the impact of unauthorized contract changes.

Tasks

ELO 3.1: Recognize the role of contract administration in the contracting process.

ELO 3.2: Recognize the formal contract amendment process.

ELO 3.3: Recognize the impact of unauthorized changes on the contract.

“Contracting for the Rest of Us”¹

After completing this reading, you will have acquired greater insight into the process and procedures of the DoD contracting process. You will learn about:

- Mission Support Planning (the pre-award phase)
- Mission Strategy Execution (the contract award phase), and
- Mission Performance Assessment (the post-award phase)

The Regulation-Based Federal Procurement Environment

The size of the regulations that govern the federal and in turn DoD contracting processes is legendary. A full understanding of DoD contracting requires having a sense of the various requirements, procedures, guidelines and forms that contracting officers must work with daily as they attempt to meet their customers' requirements. The Federal Acquisition Regulation (FAR) governs the federal procurement process, while the DoD supplement to the FAR (the DFARS) provides guidance specifically for the DoD environment. The FAR consists of 53 "parts," and the DFARS supplements 47 of those parts. The military departments and agencies in turn provide their own supplements. So you can see buying for the government is a bit more complex than a shopping trip to your neighborhood supermarket!

It should be noted that federal procurement legislation passed during the 1990s-- notably the Federal Acquisition Streamlining Act of 1994 and Federal Acquisition Reform Act of 1996--helped to reverse the trend of increasing procurement regulations, and signaled a shift towards empowering contracting officers with the ability to exercise good business judgment rather than strictly follow regulations that provided little flexibility during the contracting process.

Some Fundamental Principles

1. The program manager (when assigned) is responsible for the program. The program manager and contracting officer are jointly responsible for ensuring that the contract represents a business arrangement that meets the requirements of the program.
2. Generally, funds must be available before the contract is created.
3. Only legally "warranted" contracting officers have the authority to:
 - Enter into or terminate contracts.

¹ This article is an extract from the Defense Acquisition University Continuous Learning module CLC 011 which is based on “Contracting for the Rest of Us – Some Basic Guideline,” NAVSOP-3689, October 2000 Published by the Office of the Assistant Secretary of the Navy (RD&A) Acquisition and Business Management.

- Make "Determinations and Findings," which affect various aspects of the contract arrangement
- 4. Only the contracting officer or person(s) identified in the contract can give the contractor direction under the terms and conditions of the contract.
- 5. As in your personal life, it is important to review and understand the contract terms and conditions.
- 6. The government and contractor are obligated to do what the contract says, unless it is legally modified.
- 7. You should get what the contract says you will get.
- 8. You must verify that you get is what the contract says you will get!

Section I: Mission Support Planning

Introduction

Mission support planning (often referred to as "acquisition planning") is the up-front process of determining a strategy for effectively meeting customer needs. Acquisition planning focuses on the business and technical management approaches for achieving program objectives and meeting customer requirements within specified resource constraints. It also involves selecting the best contracting strategies for meeting those objectives and requirements.

Some of the contracting processes and associated focus areas involved in acquisition planning are:

- Understanding the customer's requirement
- Determining the degree to which the commercial marketplace can meet the requirement
- Considering socioeconomic requirements
- Selecting the best acquisition method and contract type to employ
- Understanding the Customer's Requirement

Contracting personnel cannot meet their customer's requirement if they do not understand it. Requirement documents are an essential part of any acquisition. As the business advisor, the contracting professional must get involved very early in the process to provide advice and guidance in the preparation of these documents.

It is vital that requiring activities recognize the importance of properly drafted requirement documents, as these documents will assist contracting personnel in determining whether a requirement can be satisfied by a commercial or non-commercial supply or service. Properly drafted requirements documents can help the contracting

officer develop the widest range of competition possible, which goes a long way towards reducing prices and increasing performance.

Let's look briefly at some essential contracting terms related to "Understanding the Requirement."

Purchase Request/Procurement Request (PR) - These terms are often used interchangeably. Sometimes the term "funding document" is used, as PRs also carry funding citations used for the proposed contracting action. However, the PR is essentially a requirements document created by the customer and ultimately sent to the contracting office for action. Depending on the complexity of the acquisition, the PR may be the only requirement document received. Different agencies use different forms, but the PR should have the following essential elements:

- A description of what is to be acquired
- A fund citation or other statement of funds availability
- The date by which the items or services are required
- Where the items or services are to be delivered or performed
- A point of contact at the requiring activity
- Authorized signatures
- Any other information that will help the contracting office to process the PR, such as names and addresses of recommended sources

At times, incomplete PR packages are sent to the contracting office. Contracting professionals recognize the need to educate the customer on the contents of a complete PR package. Many offices use an automated purchase request system that transmits the requirement, funding, and other information electronically. An example of one type of PR can be found [here](#).

Commercial Item - A supply or service regularly used in the course of normal business operations in the private sector. This definition also includes items that may require only minor government- directed modifications or maintenance over its life cycle to meet the needs of the government. For example, an automobile is an example of a commercial item even if modifications are needed to make it suitable for use by military security forces. Check out [FAR Part 12](#) (Acquisition of Commercial Items) for more information about contracting for commercial items.

Non-developmental Item - An existing item used exclusively for governmental purposes at the federal, state, or local levels, or by a foreign government with which the United States has a mutual defense cooperation agreement. These items do not qualify as commercial items because they have not been subjected to the supply and demand forces at work in the commercial marketplace. A submarine is a simple example of a non-developmental item...very little buying and selling of those in the commercial marketplace!

Performance Work Statement (PWS) - The PWS (sometimes referred to as a statement of work) describes in performance terms the supply or service being procured. For relatively simple acquisitions, the description on the purchase request is usually sufficient to describe the supply or service required; more complex acquisitions require a performance work statement to provide a sufficiently detailed description. Potential offerors should not be told "how" to fulfill the requirement, but rather the "outcome(s)" expected.

This approach allows offerors to use their creative talents to propose supplies and services that will meet the Government's requirement at the lowest overall cost, and is called *performance-based acquisition*. Gone are the days when DoD put out incredibly cumbersome restrictions, such as requiring that chocolate chip cookies procured for the troops must "have a diameter of not less than 2.31 inches"!

Contract Data Requirements List (CDRL) - The CDRL (pronounced "see-drill") is a document that describes the data that must be provided as deliverables under a contract. CDRLs are used for more complex requirements, such as for evaluation and reporting of jet engine performance.

Let's look at how contracting professionals evaluate the capabilities of the market place to meet those requirements!

Market Research

An important part of the contracting process is exploring the variety of potential sources that may be able to meet the government's requirement. The term used to describe this is "market research." Market research has become more important than ever in the DoD procurement process as DoD continues to move towards greater outsourcing of services and technologies. As this trend accelerates, DoD acquisition personnel need to deal with commercial practices that are commonplace in the private sector. Effective market research leads to reduced acquisition costs and cycle times, and greater access to a greater variety products, services and technologies to fulfill the Government requirement.

Market research can be broken out into two categories: strategic market research and tactical market research. Strategic market research involves an ongoing investigation into the capabilities of the commercial marketplace--emerging products, services and technologies; more effective packaging and delivery techniques; partnering arrangements; and so forth. Tactical market research provides information that is more focused on the "instant" requirement that the contracting officer is currently working, and is used to learn the capabilities of potential contractors. The Internet has exponentially expanded the ability to perform effective market research.

Socio-economic Requirements

When the contracting officer receives a request to buy something for the customer, he or she may have to consider the capability of mandatory or "preferred" sources of supply. The policy of the federal government is promote contracting opportunities for small businesses, historically underutilized business zone (HUBZone) small businesses, small disadvantaged businesses, and women-owned small businesses. There is also a program for service- disabled veteran-owned small businesses and for

products from Federal Prison Industries (FPI), as well as for businesses employing the blind and severely disabled (Javits-Wagner-O'Day, or "JWOD" Program). That's a lot for the contracting officer to keep track of!

The essential point here is that there are many Congressionally-established categories of businesses that contracting officers must consider as they determine where and how they are to meet customer requirements. It is not always as simple as selecting the contractor that offers the best item at the lowest price. [FAR Part 8](#), Required Sources of Supplies and Services and [FAR Part 19](#), Small Business Programs, contain more detailed information on this issue.

Contract Types and Evaluation Methodology

The Government has different methods of procurement available, depending on the complexity of the acquisition. There are *simplified acquisition methods* for purchases described in [Part 13](#) of the Federal Acquisition Regulation (FAR), and the more complex methods described in FAR [Part 14](#) (Sealed Bidding) and [Part 15](#) (Contracting by Negotiation). The methods range from a simple credit card purchase to a complex contracting arrangement involving the work of dozens of contracting professionals over a number of years.

Contracting officers must decide on the proper contract type during mission support planning. Some types of contracts place a lot of the risk on the contractor, while others shift more risk to the Government. Some contract types provide specific incentives for cost and performance but require more effort on the part of the contracting officer to administer.

Contracts can be generally categorized as either *fixed-price* or *cost-reimbursement*. With fixed-price contracts, the contractor is paid a firm price. The risk of performance is squarely on the contractor's shoulders. To the extent the contractor is efficient and reduces his or her costs of performance, the contractor can earn more profit. If the cost of performance exceeds the fixed contract price, the contractor can actually lose money. There are also fixed-price contracts where portions of the price are driven by incentive arrangements.

With cost-reimbursement contracts, the contractor is paid for all costs incurred in accordance with contract terms. The contractor's profit is called the *fee*, which is added to total contractor costs. The risk of performance for these types of contracts is shifted to the Government. If the incurred costs are more than expected, the contractor may not be required to deliver all of the supplies or services stated in the contract. However, the contractor generally will still be paid the fee agreed to at the outset of the contract. Under this cost-reimbursement arrangement, the contractor is only expected to give his or her "best efforts," as opposed to a very specific deliverable (as is the case with fixed-price contracts).

Evaluation Methodology

Determining the most effective methodology to evaluate contractor proposals is one of the most important aspects of designing an acquisition strategy. Contracting officers normally evaluate both price and non-price factors to award a contract to the

offeror proposing the *best value*² to the Government. For most DoD procurements, the lowest price technically acceptable (LPTA) methodology used in the past has been replaced by a best value ("tradeoff") methodology.

The contracting officer must build into the evaluation methodology the factors and significant subfactors that represent the key areas of importance and emphasis to be considered in the contractor selection decision. The factors decided upon must support meaningful comparisons between the competing proposals. For all planned acquisitions above the simplified acquisition threshold (\$100,000), the contracting officer is required by the Federal Acquisition Regulation to consider both price and non-price factors (past performance in particular) when evaluating proposals. However, the relative importance of those factors is up to the contracting officer (in conjunction with the program manager as appropriate).

Our goal for this section was to introduce some basic concepts of Mission Support Planning. We looked at Understanding the Customer's Requirement and Contract Types and Acquisition Methods. While this lesson on mission planning was not meant to be a thorough treatment it should have provided you and "the rest of us" with a look at some basic considerations involved during the initial stages of the contracting process.

Knowledge Review

TRUE or FALSE: The terms Purchase Request, Procurement Request, and Funding Document are often used interchangeably to refer to the "requirements document" passed by the customer to the contracting office.

Answer: True

TRUE or FALSE: A non-developmental item is a supply or service regularly used in the course of normal business operations for non-government purposes that is sold to the general public.

Answer: False (That's the definition of a commercial item)

TRUE or FALSE: The central idea of performance-based acquisition is that the contractor should be instructed on specific techniques for how to accomplish work for the Government.

Answer: False (Performance Based Acquisition is the idea that the performance outcome is what is important not the techniques used to achieve it.)

TRUE or FALSE: Market research has become less important in DoD contracting due to the advantages of the Internet.

Answer: False (DoD continues to outsource many of its functions, market research is more important than ever in assessing the capabilities of the market place.)

² This process permits trade-offs among price and non-price factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal should merit the additional cost.

TRUE or FALSE: When compared to fixed-price contract types, cost-reimbursement contracts shift much of the risk to the Government.

Answer: True (Under a cost type contract the contractor only has to provide his best effort to achieve the desired outcome.)

TRUE or FALSE: A contractor's past performance must be evaluated for all acquisitions exceeding \$100,000.

Answer: True

Section II: Mission Strategy Execution

Introduction

The *mission strategy execution* phase of contracting follows the mission support planning phase. When the contracting officer has understood the customer's requirement, performed market research to determine the marketplace's ability to support the requirement, and decided on the acquisition approach, he or she needs to decide on the methods to use for (i) publicizing the requirement; (ii) evaluating the offers received in response to the solicitation; and (iii) arriving at an award decision.

The Department of Defense purchases the products and services it needs using three primary methods: simplified acquisition procedures, contracting by negotiation, and sealed bidding. There is some overlap among the three methods, but each one has an entire Part in the Federal Acquisition Regulation dedicated to it. *Simplified acquisition* procedures involve the receipt of vendor quotes and the subsequent selection of the quote(s) offering the best value to the Government. *Contracting by negotiation* involves the issuance of a Request for Proposals (RFP) with the expectation of follow-on discussions before contract award is made. *Sealed bidding* requires issuance of an Invitation for Bid, against which the contracting officer awards a contract to the low-priced bidder without negotiation.

Before discussing the overarching methods of contracting, let's dive into the basics of mission strategy execution by looking at what contracting officers must do to publicize the Government requirement!

Publicizing the Requirement

When the Government exchanges information with companies in the private sector, it serves to improve their understanding of Government requirements. It also makes it easier for potential offerors to judge if, or how well, they can satisfy the Government's requirement. Publicizing proposed contract actions increases competition at the prime contractor and sub-contractor levels broadens industry participation, and helps to meet federal socio-economic policies by helping small businesses obtain contracts and subcontracts.

Federal regulations require that contracting officers publicize proposed contract actions expected to exceed \$25,000 through the on-line *government point of entry*, or [FedBizOpps](#). The notice must be posted at least 15 days prior to when the formal contract solicitation will be issued. However, contracting officers are allowed to issue a combined synopsis/solicitation document for commercial items, thus reducing the time required to solicit and award contracts for commercial item requirements.

Exceptions to the Requirement to Publicize

There are certain exceptions to the need to publicize the requirement. For example, if the requirement is considered "urgent and compelling"--an emergency fuel buy in a combat zone, for example--the contracting officer does not have to formally publicize the action. Other examples include the existence of only one responsible source who can meet the requirement, or a federal statute requiring use of a specific source (such as Federal Prison Industries). FAR section [6.302](#) lists the exceptions to publicize and compete the requirement. The contracting officer must thoroughly document the rationale for using one of these exceptions.

Proposed contract actions between \$10,000 and \$25,000 do not have to be synopsized on the "FedBizOpps" website at all, but do need to be posted in a public place or on a public electronic forum. There is no specific requirement to publicize proposed actions below \$10,000. However, for all actions above the micro-purchase threshold of \$2,500, contracting officers must obtain competitive quotes even if they do not formally publicize the requirement.

Solicitation Response Times

For non-commercial items, contracting officers must allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation if the proposed contract action is expected to exceed the simplified acquisition threshold of \$100,000. The [Standard Form 33](#) is often used as the solicitation document for non-commercial items.

For commercial items within the simplified acquisition threshold, the Federal Acquisition Regulation permits contracting officers to use streamlined solicitation procedures by shortening the normal 30-day response time required for allowing potential offerors to respond to the solicitation. The contracting officer considers the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the shortened solicitation response time. The [Standard Form 1449](#), Solicitation/Contract/Order for Commercial Items, is commonly used to solicit commercial item requirements.

Pre-solicitation Conferences

The contracting officer may decide that a *pre-solicitation conference* with potential offerors would be beneficial, particularly for a new or complex requirement. The intent of the pre-solicitation conference is to:

- Clarify complicated specifications
- Explain work concepts not easily conveyed in writing
- Assure a clear and mutual understanding of the solicitation

Frequently the results of the conference aid the contracting officer to produce a more effective solicitation document that better conveys what the Government really wants the contractors to do. This approach is at the heart of the teaming approach that is emphasized in DoD contracting. The use of *alpha contracting techniques* streamlines the acquisition process and reduces cycle time by emphasizing a partnering relationship between DoD and its contractors. The DoD contracting officer and contractors may work together to develop a solicitation package that meets the Government's needs while minimizing contractor questions or concerns with it.

Speaking of the solicitation document...it can be rather lengthy. The *Uniform Contract Format* contains 13 sections:

Section A	Solicitation/Contract Form
Section B	Supplies or Services and Price/Costs
Section C	Description/Specification/Statement of Work
Section D	Packaging and Marking
Section E	Inspection and Acceptance
Section F	Deliveries and Performance
Section G	Contract Administration Data
Section H	Special Contract Requirements
Section I	Contract Clauses
Section J	List of Attachments
Section K	Representations, Certifications and Other Statements of Offerors
Section L	Instructions, Conditions, and Notices to Offerors
Section M	Evaluation Factors for Award

All 13 sections are made part of the overall solicitation package, but only sections A through J physically become part of the final contract package.

Source Selection Considerations

Source selection is the contracting process used to select the offer that provides the best value to the Government. Contracting officers seek to obtain the best value with the use of various source selection considerations. The relative importance of the price of

an item varies for different types of acquisitions. When the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, price will likely be the dominant factor in the source selection decision. However, when the requirement is less defined and the performance risk is greater, technical and past performance considerations will be more dominant considerations. The amount of risk anticipated is a primary determinant of the source selection strategy that the contracting officer employs.

The source selection process can range from a relatively simple one to quite complex. Let's look at the simple first:

Purchases within the Micro-Purchase Threshold (\$2,500)

The Federal Acquisition Regulation requires contracting officers only to determine that the price they pay for items under the micro-purchase threshold be "fair and reasonable." There is no requirement to obtain competitive quotes.

Purchases below the micro-purchase threshold do not require any of the contract clauses that higher dollar purchases require. Government personnel outside of the contracting field typically make these purchases using the Government-Wide Commercial Purchase Card (GWCPC). DoD agencies manage their own programs for these cards. Recent reports of GWCPC abuse has resulted in tightening up of some agencies' GWCPC program controls.

Purchases within the Simplified Acquisition Threshold (\$100,000)

Contracting officers can utilize streamlined procedures when buying goods and services not exceeding \$100,000. The procedures are not as simple as those used for buying items within the micro-purchase threshold, but are not as complex as those required for higher value acquisitions.

Under simplified acquisition procedures, contracting officers do not have to do a detailed analysis of the offers they receive, as they have to do for higher-dollar acquisitions. They have to obtain just three competitive quotes (or document why they could not get three quotes). They also have fewer contract clauses to contend with. However, under simplified acquisition procedures contracting officers are still responsible for ensuring that the price they pay is fair and reasonable (which is required for every acquisition).

The "fair and reasonable" determination is made using price analysis (to be discussed shortly) and must be carefully documented in the contract file.

There is an ongoing test program that permits contracting officers to use these simplified procedures for a much broader class of purchases: commercial items less than \$5 million. This has greatly expanded the universe of purchases for which contracting officers can use simplified procedures. However, the publicizing requirements discussed earlier for any planned contract action above \$25,000 still apply.

Source Selection Considerations for Major Acquisitions

The procedures to select a contractor for a large program acquisition are more complex than for simpler, less expensive requirements. *Formal source selection* procedures are used for multi-million dollar (and higher) contracts that involve significant management and technical challenges for successful performance. DoD services and agencies have their own criteria for which acquisitions require the use of formal source selection procedures.

The *Source Selection Plan* (SSP) is the roadmap for the entire formal source selection process. It defines the elements that will go into the contract solicitation and outlines the proposal evaluation standards and methodology. The contracting officer works closely with the program manager and other user representatives to ensure that important acquisition and business aspects of the program are integrated into the SSP.

Source Selection Authority: Each formal source selection is headed by a source selection authority (SSA), who is responsible for the proper and efficient conduct of the source selection process. The SSA approves the source selection plan before the solicitation is released, and selects the source(s) whose proposal(s) represents the best value to the Government. The SSA makes the final source selection decision based on a comparative assessment of the proposals against the specific source selection criteria in the solicitation. The contracting officer often serves as the SSA, but sometimes the Agency Head appoints another individual.

Source Selection Evaluation Board (SSEB): Also referred to as the source selection evaluation team, the SSEB consists of a chairperson and members who are experienced Government contracting, technical, and management personnel. The SSEB performs in-depth and systematic evaluations of the proposals against the evaluation factors and sub-factors set forth in the solicitation. The SSEB does not compare proposals against each other, but rather on a stand-alone basis. While the specific evaluation processes and tasks vary among source selections, the basic objective remains to provide the SSA with sufficient information to make an informed and logical selection. SSEB members must be careful not to let their personal knowledge of an offeror affect their judgment. They are also responsible for carefully protecting the sensitive proposal information to which they have access.

The SSEB uses a rating system to assign values to the various factors and sub-factors. Once the initial evaluation of offers is complete, a *competitive range* is identified. This is a grouping of proposals that are clearly more competitive than the rest, based on the SSEB's evaluation. Very often one or more rounds of discussions are held with the offerors in the competitive range to clarify issues. At the conclusion of these discussions, each offeror is allowed to submit a final proposal revision.

The final step is for the Chairperson of the SSEB to prepare and present a summary report to the source selection authority that includes, for each proposal, (i) the evaluated price; (ii) the final rating for each evaluation factor and sub-factor; and (iii) a discussion of the associated strengths, weaknesses, deficiencies, and risks.

Price and Cost Analysis

Now that we have reviewed some of the important source selection considerations involved with DoD contracting, we need to look at an important process that occurs with every contract action: price analysis.

The Federal Acquisition Regulation describes various methods for conducting price analysis:

- Comparison of proposed prices received in response to the solicitation. Often the existence of adequate price competition (two or more independent offers) in itself establishes price reasonableness.
- Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items.
- Use of parametric estimating methods or rough yardsticks (such as dollars per pound or per unit of horsepower).
- Comparison of prices with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- Comparison of proposed prices with independently developed Government cost estimates.
- Comparison of proposed prices with prices obtained through market research for the same or similar items.
- Analysis of pricing information provided by the offeror.

One or more of these bases or price analysis are used to evaluate the reasonableness of proposed prices. This is not a strictly objective procedure. The contracting officer, contract specialist, or price analyst must weigh and balance various economic factors before concluding whether a price can be deemed fair and reasonable. Note that price analysis is not the analysis of individual cost elements (such as labor, materials, overhead, etc.) but rather analysis of the "bottom line" price only.

Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal. It is performed when there is not enough pricing information needed to perform effective price analysis. Contracting professionals would prefer to have to perform price analysis only--it is simpler to work with one bottom-line price than with numerous cost elements. A cost analysis for a major acquisition may involve dozens or even hundred of pages of data supplied by a contractor.

DoD contracting officers used to regularly and routinely require contractors to submit detailed cost estimate information, known as [cost or pricing data](#) for sole-source proposals that exceeded \$500,000. Acquisition streamlining legislation during the 1990s reduced the occurrence of this. Contracting officers are not permitted to unnecessarily

require the submission of cost or pricing data because it leads to increased proposal preparation costs, extends acquisition lead times, and consumes additional contractor and Government resources.

Currently, proposals for any items that meet the [commercial item definition](#) are exempt from any requirement to submit cost or pricing data, as are most non-commercial proposals that do not exceed the current threshold of \$550,000. Competitive (non-sole source) proposals at any dollar value do not require submission of cost or pricing data.

The Contract Award

Two common forms used in DoD contracting to make the actual award are the [SF 1449](#), Solicitation/Contract/Order for Commercial Items and the [DD Form 1155](#), Order for Supplies or Services. The SF 1449 is used for commercial items, while the DD Form 1155 is used for non-commercial item purchases within the simplified acquisition threshold (\$100,000).

Note that a purchase order made with the DD Form 1155 is not an actual contract between the parties. It is merely an offer by the Government to purchase supplies and services at the vendor's quoted price. A contract is established only when the vendor accepts the offer by signing and returning the DD Form 1155.

Large, non-commercial item contracts are normally made using the [SF 26](#), Award/Contract. When the SF 26 is used, a contract is formed as soon as the DoD contracting officer signs it, as the contractor had already submitted a formal proposal (not just a quote) to the contracting officer. Once DoD accepts the proposal, a contract is essentially in place.

As mentioned earlier in this section, the Government-Wide Commercial Purchase Card is essentially a credit card that DoD cardholders use to make purchases within the micro-purchase threshold of \$2,500. While the card is not really a document in itself, GWPC purchases comprise a large portion of all DoD purchasing actions. The General Services Administration reported in 2004 that government-wide purchases using the GWPC amounted to \$16.3 billion. The card accounts for almost all purchases in DoD that fall within the micro-purchase threshold of \$2,500.

Contract Bundling

Contract bundling occurs when federal agencies combine contracts to realize economies and efficiencies that come with large orders. However, contracts that become too large for small businesses to bid on or participate in as prime contractors translates into significant loss of revenue for small businesses. Contracting officers are responsible for justifying bundling of contract requirements so that small businesses are not excluded from the competition for contracts.

Contract Splitting

It should now be clear that from a contracting or ordering officer perspective, there are time-saving advantages to having an acquisition fall within the various thresholds:

- \$2,500 micro-purchase threshold
- \$25,000 synopsis requirement threshold
- \$100,000 simplified acquisition threshold
- \$5 million test program for commercial items threshold

There may even be a temptation to "split" a large acquisition into two or more smaller ones to get below a threshold. The Federal Acquisition Regulation strictly forbids splitting of requirements for this purpose. DoD requiring activities are responsible for providing the full extent of their requirement to their contracting officer up front. However, a contracting officer may properly split a requirement for a valid reason, such as to ensure that more than just one contractor maintains the production facilities for an item that provides an important capability for DoD.

Mission Strategy Execution Summary

Mission Strategy Execution begins with the publicizing of the customer requirement that comes to the contracting officer via the purchase request. Publicizing often includes an online synopsis of the requirement in "FedBizOpps", followed by posting of the formal solicitation document. The requirements for evaluating and selecting a contractor (the source selection process) depend on the dollar value of the planned purchase. There are less stringent requirements for micro-purchases (below \$2,500) and for other purchases below the simplified acquisition threshold (\$100,000). For large and complex procurements, formal source selection procedures are often used to systematically evaluate and rate proposals.

The discussion of the process provided in this section in no way covers all of the considerations that contracting officers must deal with for the range of procurements that they work day in and day out. However, it was meant to provide you-the student-with a window into what it takes to get a customer requirement onto contract.

Knowledge Review

TRUE or FALSE: Requirements for planned contract actions expected to exceed \$2,500 normally must be synopsized at the Government Point of Entry, known as "FedBizOpps."

Answer: False (Actions expected to exceed \$25,000)

TRUE or FALSE: Purposes of a pre-solicitation conference include the following three considerations: Clarify complicated specifications, Explain work concepts not easily conveyed in writing, and assure a clear and mutual understanding of the solicitation.

Answer: True

TRUE or FALSE: Only warranted contracting officers can make purchases within the micro-purchase threshold (\$2,500).

Answer: False

TRUE or FALSE: Under simplified acquisition procedures, contracting officers must obtain at least three competitive quotes

Answer: True

TRUE or FALSE: Price Analysis deals with the "bottom line" price of an item, while cost analysis is concerned with the component elements of the bottom line price.

Answer: True

TRUE or FALSE: It is the policy of the Federal Acquisition Regulation to obtain Cost or Pricing Data for as many contractors as will provide it.

Answer: False (There are narrow restricts on when the Government can require cost and pricing data.)

Section III: Mission Performance Assessment

Monitoring Contract Performance

The contracting officer has awarded the contract and can lie back and relax until the next contract requirement comes along, right? Not quite. He or she still has to ensure that the customer receives the product or service at the right time, at the right level of quality, and then pay the contractor for the effort.

This is the *period of performance* for the contract. The contracting officer's duties now include monitoring and assessing contractor performance; product or service acceptance; and payment. Other related activities will depend primarily on how well the contractor meets the terms and conditions of the contract...the totality of which is often referred to as *contract administration*.

Very often the contracting officer that signed the contract, the Procurement Contracting Officer (PCO), stays with the contract over the entire course of contract administration and oversees contract performance, acceptance, and payment. This concept is called "cradle to grave" contracting. At other times the PCO hands off the contract administration responsibilities to another contracting officer: the Administrative

Contracting Officer (ACO). This is more likely the case for large systems acquisitions, where the administration of these programs requires dedicated attention to administer due to the technical and financial complexity of contract performance. The ACO works in a *contract administration office* (CAO).

Both the Government and the contractor are obligated to act in accordance with the terms and conditions laid out in the contract. However, not all contracts are performed in compliance with the terms and conditions or within the required time frames. Poor performance or late deliveries may cause costly delays in a program. As a result, the DoD contracting officer must closely monitor contract performance to ensure that the required supplies or services are delivered on time.

[Part 46](#) (Quality Assurance) of the Federal Acquisition Regulation requires federal agencies to ensure that deliverables tendered by contractors meet contract requirements before they are formally accepted by the Government. Moreover, no contract can preclude the Government from performing inspection and *acceptance*³ measures.

Contracts for commercial items rely on contractors' existing quality assurance systems rather than on Government-specific quality evaluation procedures. This was another benefit of the acquisition streamlining legislation of the 1990s. When it is customary commercial practice for the buyer (Government in this case) to perform an in-process inspection, the Government must conduct it in a manner consistent with customary commercial practice. The key point here is that the Government must not unduly burden commercial contractors with oversight that they do not encounter when they sell to private-sector buyers. This helps to encourage more companies to do business with the Government and helps to keep prices down!

Contract Clauses for Inspection of Performance

Contracts are full of clauses, including those that pertain to contract monitoring. There are four basic types of inspection requirements:

- **Government Reliance on Inspection by the Contractor (Non-commercial Items).** This is the standard clause used for supplies or services when the contract amount does not exceed the simplified acquisition threshold (\$100,000). The clause allows some specialized Government inspection and testing, but relies on the contractor for overall inspection.
- **Government Reliance on Inspection by the Contractor (Commercial Items):** This clause states that the contractor will tender only supplies or services that conform to the requirements of the contract. It further states that the Government reserves the right to inspect or test any supplies or services that have been provided under the terms of the contract.

³ Acceptance is the act of an authorized Government representative to assume ownership of supplies or approve services rendered as partial or complete performance of the contract.

- **Standard Inspection Requirement:** The standard inspection clause ("Inspection of Supplies—Fixed-Price") requires that the contractor establish and maintain an inspection system that is not specifically defined by the Government; but it must be acceptable to the Government. The standard inspection clause may be the only inspection clause in a contract, or it can be the foundation for other Government inspection requirements. The FAR specifies other clauses for use with different contract types and in specific situations. With minor adjustments in wording for contract type and applications, these are basically the same as the standard inspection clause.
- **Higher-Level Quality Control Requirement:** This clause is used when the technical requirements of a contract mandate closer control of work processes or attention to such factors as planning. This type of clause requires the contractor to comply with Government inspection or quality assurance procedures, if such are described in the contract. An example of a higher-level quality control standard is ISO 9000. This clause is typically used for higher-level weapons systems contracts.

For non-commercial items, contracting officers may require "first article testing," or testing and evaluating the first article for conformance with specified contract requirements before the initial stage of production. This helps to provide the Government with assurance that an item will work as the Government needs it to work. This determination needs to be made before authorizing a contractor to proceed with full-scale production, lest a whole batch of items are produced that don't work quite the way expected.

Communication is very important and the key to effective contract administration. All Government officials involved in contract administration must report to the ACO any meaningful communications they have held directly with the contractor, including any information that might potentially affect the performance, price, cost or any other contract requirements. Meaningful communications help control actions that are otherwise inconsistent with contract requirements.

The contracting officer should develop a method to monitor Government representatives responsible for specific tasks in a contract. One technique is to include copies of required correspondence from technical and other support personnel in the contract file.

The contracting officer must ensure that other Government personnel engaged with the contractor's performance are not authorizing the contractor to perform unintended changes to the contract that could incur unanticipated costs to the Government. These "unauthorized commitments" are defined in the Federal Acquisition Regulation as "an agreement or purchase that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government." Only a duly-appointed contracting officer or his/her delegate can direct a contractor to perform work. When a contracting officer has to authorize work under a contract that an unauthorized Government representative caused the contractor to perform, a contract ratification is made.

Contracting Officer Representatives

The Contracting Officer Representative (COR) or Contracting Officer Technical Representative (COTR) assists the contracting officer with ensuring that the contractor is performing the technical requirements of the contract in accordance with contract terms, conditions, and specifications. They submit reports that identify potential or actual delays in performance, and work with the contracting officer and contractor to develop recommendations for remedial action if needed. For example, the COR may provide quality assurance checks on an installation janitorial contract. CORs performing quality checks are also referred to as quality assurance representatives (QAR) or evaluators (QAE).

For more complex projects, the COR/COTR reviews and verifies the contractor's work progress by the percentage of work completed, and then submits the results in progress reports to the contracting officer. Some contracts require contractor self-reporting of progress and direct submission to the contracting officer.

The COR/COTR cannot:

- Award, agree to, or sign any contract. All contractual agreements, commitments, or modifications shall be made only by the contracting officer.
- Make any commitments or obligate the Government to make changes to the contract.
- Grant deviations from or waive any terms and conditions of the contract.

Changes to the Original Contract Terms and Conditions

Contract Breach

Careful monitoring of a contract pays dividends in the early identification of performance problems. Various problems can occur, some involving one party breaking a promise, technically referred to as a breach. A breach of contract is a failure, without legal excuse, to perform any promise that forms whole or part of a contract. Every breach of contract gives the injured party the right to pursue and collect damages.

The Government can be guilty of a breach when it issues a unilateral change to a contract that is outside the scope of the contract or fails to disclose pertinent site information for on-site construction work, for example. More typically, the contractor is found to be in breach of contract when it does not fulfill its obligations under the contract, abandons contract performance altogether, or commits a fraudulent act in connection with a contract.

Contract Terminations

Termination for Convenience

A termination for convenience ("T4C") occurs when the Government terminates a contract despite full contractor compliance with its contractual obligations. The Government's right to T4C is one of the most unique provisions of government contracting, with no counterpart in common law contracting. In no other area of contract law has one party been given such complete authority to escape from contractual obligations. The Government does not need any particular reason to terminate a contract for convenience, other than it is in its best interest to do so. In fact, termination for the convenience of the Government is so inherent to government contracting that the concept has been upheld by court ruling even when the appropriate clause is not included in the contract. However, the settlement terms for a T4C on a government contract for commercial items must be bilateral (agreed to by both parties).

The most common reason for the Government to T4C a contract is the simple fact that the supplies or services are not needed in the quantities originally contracted for. However, sometimes a contracting officer is directed to issue a relatively benign T4C instead of a Termination for Cause or a Termination for Default (to be discussed in a moment) when a Court decides in favor of a contractor as a result of an appeal filed by a contractor against a Government attempt to terminate for non-performance.

When the contracting officer notifies the contractor that a T4C is planned, the contractor is responsible for submitting a settlement proposal to the contracting officer. The final settlement should compensate the contractor fairly for work done and preparations made for the terminated portions of the contract...including a reasonable allowance for profit (but not "anticipatory profit"). The contracting officer's use of business judgment, as distinguished from strict accounting, is the heart of a settlement. After all, In a T4C situation there is no "fault" presumed on the part of the contractor.

Terminations for Cause and Default

The Government has a contractual right to partially or completely terminate a contract because of a contractor's lack of performance or improper performance. "Termination for cause" applies to commercial contracts, while "termination for default" (T4D) applies to contracts for non-commercial items.

The Government may terminate all or portion of a commercial item contract for cause or default if the contractor fails to comply with contract terms and conditions, or provide the Government with adequate assurances of future performance.

When the supplies or services are still required after termination, the contracting officer can acquire the same or similar supplies or services from another source and charge the contractor for any excess re-procurement costs. In the event that the contracting officer and the contractor cannot reach agreement on the re- procurement amount due to the Government, the contracting officer can issue a final, unilateral

determination. If the contractor disagrees with the decision, the contractor may initiate dispute proceedings with the Armed Services Board of Contract Appeals. However, all possible attempts are normally made to resolve disputes outside the court system with the use of Alternate Disputes Resolution (ADR) procedures, which often involves the involvement of a disinterested third party acting as facilitator.

Notices to Contractors Prior to Termination

Cure Notice

Before the contracting officer can issue a termination order, he or she is required to issue a cure notice. This specifies the extent of the contractor's failure and provides the contractor a period of 10 days in which to "cure" the failure. A cure notice is required in all cases for cost- reimbursement type contracts. For fixed-price contracts, it is required in all cases except for failure to deliver supplies or to perform a service on time.

Show Cause Notice

This notice is issued when there is not sufficient time remaining in the delivery schedule to cure the problem (normally 10 days) or if the contractor failed to correct a problem identified in an earlier cure notice. The show cause notice advises the contractor of the consequences of a termination, and asks the contractor to "show cause" why the contract should not be terminated.

Contract Modifications

In a perfect world, Government contracts would need no changes for any reason, whether due to a termination, change in customer requirements, contractors switching financial institutions or merging with other businesses, or because the original contract document is missing a relatively minor detail. However, in the real world of Government contracting, contract changes are often required in order to better serve the customer. Most changes occur due to changes in the scope of the contract requirements and because of routine administrative adjustments.

A contract modification is any change to the terms of a contract. Technically, a contract termination is also considered a modification, but most modifications have nothing to do with contract termination.

Only contracting officers can execute a legal modification of a Government contract. There are two types: bilateral and unilateral.

Unilateral modifications are signed only by the Government's contracting officer, and are used to:

- Make administrative changes
- Issue change orders
- Make changes authorized by other contract clauses

For example, when there is an economic price adjustment clause in a contract to account for periodic swings in the price of commodities (such as fuel), a modification is "cut" to pay the contractor more or less for that period's deliveries.

One of the more common types of unilateral modifications is the change order-- a signed modification from the contracting officer directing the contractor to make a change that the "Changes" clause of the contract authorizes without the contractor's expressed consent. For example, a minor change in the delivery location for supplies would be within the scope of the original contract, and could be unilaterally directed by the Government contracting officer.

Bilateral modifications (also known as supplemental agreements) are modifications that require both Government and contractor signatures. The most common use of a bilateral modification is to make a negotiated, equitable adjustment to a contract resulting a change in work that is outside the scope of the original contract. For example: Base security forces need double the number of body armor suits than were originally stated on the original contract. This major change is clearly outside the scope of the original contract, and would require agreement by the contractor before the Government contracting officer can modify the contract to reflect the new quantity.

Contract Payment and Contract Closeout

Payment

The goal of every contracting arrangement is for the Government to receive and be satisfied with the supplies and services it contracted for, and for the contractor to get paid for his or her efforts. Not all payment is made at the end of a contract. There are instances where contracting officers can finance the work under a contract before the work is completed.

Contract Financing

For some contracts for non-commercial items, the contracting officer may provide progress payments to the contractor, which is a form of contract financing payable before the work or deliverables are accepted. The markers of the "progress" are defined in the contract itself, and the contracting officer matches the outlay of progress payments to the completion of work. The customary progress payment rates for DoD contracts are 80 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses. A contractor may receive up to those percentages of their costs as the work progresses.

For commercial items, contract financing is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include financing terms in contracts for commercial items when doing so will be in the best interest of the Government. Contracting officers can also provide advance or interim

payments (independent of the completion of contract performance) under contracts for commercial items if it is customary practice in the private sector.

Despite these provisions for contract financing, most DoD contracts are not financed by the Government. Contractors typically are not paid until they deliver the supplies or perform the services specified in the contract. The [DD Form 250](#), Material Inspection and Receiving Report, is a multi- purpose document that serves as evidence of inspection and acceptance, shipping document, receiving document, and contractor invoice for many supplies and services. DoD departments and agencies have automated the information on the DD Form 250 with varying degrees of success, but the ultimate goal is for the department/agency contracting systems and the Defense Finance and Accounting Service's (DFAS) system to be fully integrated using electronic data interchange. Contracting officers from all DoD components will be able to electronically certify to DFAS that the terms of the contract were fulfilled, and DFAS will be able to pay the contractor by matching the contracting officer's certification to the contractor's electronically submitted invoice.

Contract Closeout

The contracting process is not entirely complete when final delivery is made of the required supplies and services and the contracting officer has authorized payment to the contractor. The contract closeout process is not complete until all administrative actions are performed. Issues such as return of any government property used by the contractor, the disposition of classified or sensitive documents in possession of the contractor, and any disputes relating to the incurring of actual costs in cost-reimbursable contracts need to be resolved before the contract can be closed out. Timely closeout de-obligates excess funds and returns those remaining funds for possible use elsewhere.

The [DD Form 1597](#), Contract Closeout Checklist, provides an idea of the various issues that need to be addressed before a contracting officer can finally put a contract to rest.

Summary: Our goal for this lesson was to introduce some basic concepts of Mission Performance Assessment.

We looked at:

- Monitoring Contract Performance
- Changes to the Original Contract Terms and Conditions, and
- Contract Payment and Contract Closeout

Again, this section was not meant to be a thorough treatment of the subject, but rather to provide you with a look at some considerations involved during the later part of the contracting process.

Knowledge Review

TRUE or FALSE: Contracts for commercial items rely on the contractor's existing quality assurance system rather than on Government-specific quality evaluation procedures.

Answer: True

TRUE or FALSE: The Contracting Officer's Representative (COR) can sign contract awards, if so delegated in writing by the contracting officer.

Answer: False (Only a warranted contracting officer can sign a contract.)

TRUE or FALSE: Contractors must substantially agree to the terms of a government Termination for Convenience.

Answer: False (Government contracting officers can unilaterally terminate a contract for convenience.)

TRUE or FALSE: Government contracting officers must issue a Show Cause notice prior to terminating any contract for non-performance.

Answer: True

TRUE or FALSE: Progress payments are made to contractors when the quality of their work exceeds the minimum standards set forth in the contract.

Answer: False (They are based on the extent of work completed.)

TRUE or FALSE: The DD Form 250, Material Inspection and Receiving Report, serves as evidence of inspection and acceptance, shipping document, receiving document, and contractor invoice for many supplies and services.

Answer: True